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VIA COURIER

June 20, 2005

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Marlene R. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

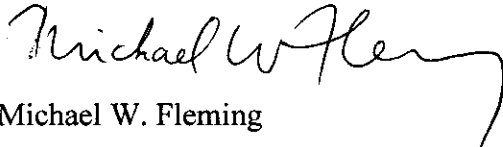
Federal Communications Commission
Office of Secretary

Re: In the Matter of Administration of the North American Numbering Plan, CC
Docket No. 99-200

Dear Ms. Dortch:

On behalf of Pac-West Telecomm, Inc., enclosed please find for filing in the above-referenced docket the attached Pac-West Telecomm, Inc. Reply to Comments.

Sincerely,


Michael W. Fleming

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

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JUN 20 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Administration of the North American Numbering) CC Docket No. 99-200
Plan)

PAC-WEST TELECOMM, INC.
REPLY TO COMMENTS

Pac-West Telecomm, Inc. ("Pac-West") hereby replies to the comments filed in response to the Pac-West Petition for Clarification filed on March 3, 2005. In its Petition, Pac-West sought clarification of the Commission's decision to grant SBC Internet Services, Inc. ("SBC-IS") a waiver of Section 52.15(g)(2)(i) of the Commission's rules in the above-referenced proceeding.¹

In response to Pac-West's Petition, three Bell Operating Companies and a proxy for the fourth have attempted to postpone resolution of the questions presented by Pac-West. Postponing resolution does no one any good because the questions presented by the Pac-West Petition go squarely to how carriers and VOIP providers provide service in the immediate future. If the Commission postpones resolution of these important issues, the industry will stumble

¹ *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20 (released Feb. 1, 2005) ("*Waiver Order*"). Pac-West had asserted that the *Waiver Order* has unintended consequences that require clarification. The *Waiver Order* causes substantial confusion as to the intercarrier compensation arrangements between traditional providers of telecommunications services and a non-carrier entity, such as SBC-IS. Further, number portability obligations and the applicability of state and federal unauthorized carrier change rules are difficult to harmonize in light of the *Waiver Order* without clarification from the Commission. Interconnection obligations under section 251 of the 1996 Telecommunications Act are also unclear as a result of the *Waiver Order*. Finally, the Commission failed to safeguard against the potential for a "price squeeze."

towards resolution and the Commission will have lost an important opportunity to act as a regulatory leader rather than as a re-active regulatory arbitrator.

In response to Pac-West's request for clarification regarding the obligations of SBC-IS to pay intercarrier compensation, SBC-IS concedes that "SBCIS is committed to ensuring that the appropriate compensation is paid to the relevant carriers that handle that traffic (including access charges)." SBC-IS Comments at 7 n.27. This concession is not sufficient because SBC-IS did not reveal what form the "appropriate compensation" will take, or what provisions of the Telecom Act or FCC rules are appropriate for determining compensation. BellSouth and Verizon take a different approach and argue that the Commission should rule that access charges are owed by SBC-IS to Pac-West. Verizon Comments at 4; BellSouth Comments at 5. Pac-West realizes that whether access charges are owed for VOIP traffic being terminated on the PSTN is a major question before the Commission, and it did not ask for resolution of that issue now. Pac-West seeks clarification from the Commission about which entity owes compensation to Pac-West, and if it is not the carrier interconnected with Pac-West (if it is not the carrier serving SBC-IS), under what rules the compensation is owed.

The Commission should also note that the SBC entity responding to the Pac-West Petition is the unregulated information services affiliate. Does SBC-IS speak for SBC on these issues? When SBC-IS makes a pledge to honor number portability requirements and adhere to intercarrier compensation requirements, does SBC also make that pledge? This question is of critical importance: even though SBC-IS has agreed to pay "appropriate compensation" to Pac-West for terminating SBC-IS calls, does SBC agree to pay Pac-West compensation if the call travels through SBC's network before reaching Pac-West? If, as an end user, SBC-IS has no

reciprocal compensation obligations to Pac-West now, it does no good for SBC-IS to promise to fulfill its obligations to pay compensation to Pac-West.

Along these lines, the dismissive tone by the BOCs and the BOC-proxy seems puzzling, given the potential implications of the *Waiver Order*. On page 4 of its Comments in response to the Pac-West Petition for Clarification, SBC-IS says, "The only party confused here is Pac-West." SBC-IS may have its reasons to feign understanding of the consequences of the *Waiver Order*, but Pac-West has to wonder, why isn't anyone else confused? The *Waiver Order* granted enormous privileges to one of SBC's affiliates by permitting SBC-IS to obtain numbering resources from the numbering administrator without also obtaining certification as a telecommunications carrier. In other words, SBC-IS was granted particular legal rights previously limited to telecommunications carriers, without having to obtain any of the regulatory approvals, or be subject to any of the regulatory oversight, applicable to all local exchange carriers. Presumably, all other similarly situated VOIP providers will also be granted similar legal rights. Thus, the Commission has created a new class of telecommunications entity—the quasi-carrier: it can get telephone numbering resources previously reserved for carriers, without having to bear any of the obligations carriers bear when it uses those resources.

Consider the implications this way—when SBC-IS loads its new telephone numbers into the LERG, and attaches an OCN to its signaling information for calls originated from those numbers, and Verizon terminates a telephone call with the SBC-IS OCN on the billing record, who is Verizon going to bill to complete that call? Does Verizon have an interconnection agreement with SBC-IS, even though Verizon insists SBC-IS is not a carrier? If the calls are subject to access charges provided pursuant to tariff, to whom does Verizon send the access charge bill? Is Verizon assuming that it will be able to collect compensation from the LEC

serving SBC-IS, or any LEC serving any VOIP provider? What is the basis for that assumption?

In the Intercarrier Compensation docket, the Expanded Portland Group complained about so-called "phantom traffic," or traffic without sufficient call detail information for the terminating carrier to bill and collect terminating compensation. In that scenario, calls are coming to a particular carrier without information about the carrier that would be responsible for compensation. How is that same terminating carrier supposed to handle a call that arrives with complete call information, but with a carrier identification number for an entity that is not even a carrier? Where does a carrier go to enforce unpaid tariffed charges when the originating quasi-carrier is not even a customer of the terminating carrier? This issue of a non-carrier having an OCN and how that completely distorts existing billing arrangements is just one example that comes to mind of how the *Waiver Order* has the potential to cause enormous disruption to interconnection arrangements.

The simple truth is that it now appears the *Waiver Order* was completely unnecessary. SBC-IS claims that it needed access to numbering resources "so it could pursue more efficient forms of interconnection with the public switched telephone network." SBC-IS Comments at 4. SBC-IS identifies trunk-side interconnection as one of these efficient forms of interconnection. Yet SBC-IS could most certainly have obtained trunk-side interconnection without having access to numbering resources. Pac-West offers trunk-side interconnection to end users with the ability to have access to large blocks of telephone numbers. If SBC-IS had come to Pac-West for service, Pac-West could have made arrangements to suit SBC-IS's interconnection needs while also providing sufficient flexibility over the use of telephone numbers. The purported reasons for SBC-IS to need numbering resources have nothing to do with regulatory restrictions on SBC-

IS's ability to provide services; because they have no basis in regulatory requirements, Pac-West posits that they are related solely to business-level decisions by SBC.

Further, as SBC-IS concedes, the purpose for the relief was to "pursue more efficient forms of interconnection with the public switched telephone network." SBC-IS Comments at 4. In this case, the party making the request is a VOIP provider, but the identical argument could be made by a university, or a large corporation, or any other end user with its own network that would like to have trunk-side interconnection with the public switched network. How does the Commission expect to distinguish one type of end user from another, or is the Commission prepared to grant a request to obtain numbers directly from the numbering resource administrator for any end user that wants to "pursue more efficient forms of interconnection with the public switched telephone network"? ¹

Further, SBC-IS says that it has obtained no interconnection rights, only access to interconnection resources. SBC-IS Comments at 4. While this concession is interesting, it does not help Pac-West understand the FCC's intent on this issue. If SBC-IS is correct that the Commission granted SBC-IS interconnection "resources" but not rights, then it is necessary for the Commission to define what is meant by "resources" since interconnection rights are defined in the Telecom Act but "resources" are not. The Commission should make clear in response to Pac-West's Petition that SBC-IS has no rights as a carrier, other than the limited right to obtain numbering resources directly from the numbering administrator. Similarly, the Commission should make clear that SBC-IS has no obligations as a carrier, other than the limited obligations to adhere to requirements related to numbering resources that apply to carriers. Regarding number portability, SBC-IS answers Pac-West's Petition questions in the affirmative, effectively agreeing that SBC-IS has the same obligations that apply to carriers obtaining numbering

resources. The Commission should commit SBC-IS to those positions by adopting them into an order addressing Pac-West's Petition.

It may be true that some of the issues raised by Pac-West in its Petition for Clarification are also pending in other dockets. That does not excuse the Commission from resolving them in this proceeding. By granting SBC-IS the waiver it sought, the FCC brought those issues into this proceeding to the extent the waiver implicates those issues. Pac-West's goal is to obtain some certainty on some of the implications of having a non-carrier obtain the rights to numbering resources. Postponing resolution of these questions does no party any good, and could result in carriers taking steps in response to the ability of end users to bypass LEC administration of telephone numbers that could prove to be unnecessary once the questions are answered.

Pac-West Telecomm, Inc. requests that the Commission clarify its decision to grant a waiver to SBC-IS of Section 52.15(g)(2)(i) of the Commission's rules. The Commission should clarify the scope of the rights and obligations of a carrier that SBC-IS may have, particularly the obligations of SBC-IS to pay compensation to the carriers that complete calls on its behalf.

Respectfully submitted,

/s/

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Counsel for Pac-West Telecomm, Inc.

Dated: June 20, 2005

CERTIFICATE OF SERVICE

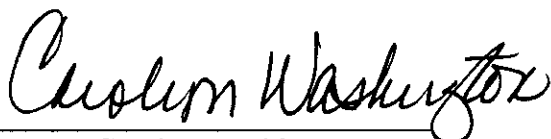
This is to certify that I have duly served the attached Pac-West Telecomm, Inc. Reply to Comments upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated this 20th day of June, 2005, addressed as follows:

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